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In the Supreme Court of the United States

OCTOBER TERM, 1976

76-1296

ANTHONY TURZITTI and JOEL M. GLICKMAN,

Petitioners,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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To: The Honorable, The Chief Justice and Associate Justices of the Supreme Court of the United States.

The petitioners, Anthony Turzitti and Joel M. Glickman, pray that a writ of *certiorari* issue to review the judgment of the United States Court of Appeals for the Seventh Circuit affirming judgments of conviction entered by the United States District Court for the Northern District of Illinois, Eastern Division.

OPINION BELOW

The Opinion of the United States Court of Appeals for the Seventh Circuit in *United States* v. *Anthony Turzitti; Joel M. Blickman* and *Randolph Riotto,* No. 76-1434, was entered on January 3, 1977, but is not yet officially reported. It is printed as Appendix A to this petition. (App. 1) The order denying petitioners' Petition for Rehearing, entered on February 18, 1977, is printed as Appendix C to this petition. (App. 11.)

JURISDICTION

The jurisdiction of this Court is invoked under Title 28, United States Code, Section 1254(1).

QUESTION PRESENTED FOR REVIEW

Whether the interpretation of Title 18, United States Code, Section 1955, taken by the United States Court of Appeals for the Seventh Circuit is in conflict with the interpretations of other circuit courts of appeal.

STATUTORY PROVISION INVOLVED

Title 18, United States Code, Section 1955

§ 1955. Prohibition of illegal gambling businesses

(a) Whoever conducts, finances, manages, supervises, directs, or owns all or part of an illegal gambling business shall be fined not more than $20,000 or imprisoned not more than five years, or both.

(b) As used in this section—

(1) "illegal gambling business" means a gambling business which—

(i) is a violation of the law of a State or political subdivision in which it is conducted;

(ii) involves five or more persons who conduct, finance, manage, supervise, direct, or own all or part of such business; and

(iii) has been or remains in substantially continuous operation for a period in excess of thirty days or has a gross revenue of $2,000 in any single day.

(2) "gambling" includes but is not limited to poolselling, bookmaking, maintaining slot machines, roulette wheels or dice tables, and conducting lotteries, policy, bolita or numbers games, or selling chances therein.

(3) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(c) If five or more persons conduct, finance, manage, supervise, direct, or own all or part of a gambling business and such business operates for two or more successive days, then, for the purpose of obtaining warrants for arrests, interceptions, and other searches and seizures, probable cause that the business receives gross revenue in excess of $2,000 in any single day shall be deemed to have been established.

(d) Any property, including money, used in violation of the provisions of this section may be seized and forfeited to the United States. All provisions of law relating to the seizures, summary, and judicial forfeiture procedures, and condemnation of vessels, vehicles, merchandise, and baggage for violation of the customs laws; the disposition of such vessels, vehicles, merchandise, and baggage or the proceeds from such sale; the remission or miti-

gation of such forfeitures; and the compromise of claims and the award of compensation to informers in respect of such forfeitures shall apply to seizures and forfeitures incurred or alleged to have been incurred under the provisions of this section, insofar as applicable and not inconsistent with such provisions. Such duties as are imposed upon the collector of customs or any other person in respect to the seizure and forfeiture of vessels, vehicles, merchandise, and baggage under the customs laws shall be performed with respect to seizures and forfeitures of property used or intended for use in violation of this section by such officers, agents, or other persons as may be designated for that purpose by the Attorney General.

(e) This section shall not apply to any bingo game, lottery, or similar game of chance conducted by an organization exempt from tax under paragraph (3) of subsection (c) of section 501 of the Internal Revenue Code of 1954, as amended, if no part of the gross receipts derived from such activity inures to the benefits of any private shareholder, member, or employee of such organization except as compensation for actual expenses incurred by him in the conduct of such activity.

Added Pub.L. 91—452, Title VIII, § 803(a), Oct. 15, 1970, 84 Stat. 937.

STATEMENT OF THE CASE

Anthony Turzitti and Joel M. Glickman were indicted with two co-defendants, Randolph L. Riotto and Roger Riccio, in a one count indictment charging violation of Title 18, United States Code, Section 1955. The indictment was returned in the United States District Court for the Northern District of Illinois.

The case was tried before a jury. At the close of the government's case, the trial judge granted a judgment of acquittal to defendant Riccio. Defendants Glickman, Turzitti and Riotto were found guilty and judgment was entered thereon.

Defendant Turzitti was sentenced to eighteen months imprisonment and defendant Glickman was sentenced to two years imprisonment and a fine of $10,000.

STATEMENT OF FACTS

Testimony of F.B.I. Agent Durling

He supervised the wiretaps which were placed on three telephones for fourteen days from October 10 to October 23, 1973 and which produced approximately 300 gambling related conversations (Tr. 20).[1] The composite tape consists of fourteen conversations picked from the 300 (Tr. 22). The tapes of these conversations were admitted into evidence (Tr. 23).

The witness identified all the defendants. The defendant Joel Glickman's voice was not heard on any of the tapes (Tr. 46-47). During the period of the wiretaps, the defendant Anthony Turzitti owned and operated Rocky's Tavern at 1121 South Racine in Chicago. Charles Naponelli worked at Rocky's Tavern and the defendant Randolph "Rudy" Riotto ran a Mobil gas station in Rolling Meadows (Tr. 48-49). Augustus "Gus" Lazzerini owned and operated a restaurant in Chicago at this time (Tr. 49).

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[1] The wiretaps were placed on defendant Turzitti's home, the tavern which defendant Turzitti owned, and the gasoline station leased by defendant Riotto.

Government Exhibit 1 is a composite of fourteen conversations on tape. The jury was also given an index of these conversations and transcripts to read along with as they listened to the tapes (Tr. 50). The fourteen conversations were then played for the jury with the witness identifying the dates, times and speakers as set forth in the index supplied (Tr. 52-64).[2]

Testimony of F.B.I. Agent William Deaton

On October 12, 1973, he observed Defendants Roger Riccio and Anthony Turzitti meet the defendant Joel Glickman at Vannie's Restaurant in downtown Chicago (Tr. 88). Sitting at the bar, he overheard the defendant Turzitti say that he was "busted" and also mention the name "Gus." He also heard the defendant Glickman state ". . . something to the fact that he had lost a great deal of money the previous week because he did not have any outs; he had lost approximately $1,500" (Tr. 89-90).

Testimony of Hal C. Smith

He has been a gambler for about twenty years. He has also been a bookmaker. In September of 1973 he agreed to work for Joel Glickman by contacting four or five persons who placed football wagers. He would obtain line information (odds on the games) from Mr. Glickman, provide this information to the bettors and they would place their bets with him (Tr. 98-100).

Glickman would speak to Smith once or twice a day. Glickman allowed Smith to work for him as a favor to Smith because Smith had lost his job (Tr. 101). Smith was paid several hundred dollars a week (Tr. 102).

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[2] The contents of the conversations can be found in the composite index and transcripts, three copies of which were filed with the record. Their summarization follows the statement of facts.

Smith had four or five betting customers of his own. One of these was Gus Lazzerini. Lazzerini indicated to Smith that he, Lazzerini, had some betting customers of his own. Smith furnished Lazzerini with line information that he received from Glickman (Tr. 102-103).

During the fall of 1973, Smith and Lazzerini had an arrangement that they would share 50-50 in the wins and losses from the bets Lazzerini got from his customers. Lazzerini told Smith he was receiving bets from Anthony Turzitti and Roger Riccio, ". . . they were working as a combo." (Tr. 106).

In the fall of 1973, Lazzerini owed Turzitti and Riccio several thousand dollars because they beat him on horse race bets. Lazzerini asked Smith to lend him money (Tr. 107).

In September, 1973, Smith went to Lazzerini's restaurant where he was introduced to Anthony Turzitti. Turzitti wanted to place bets with Smith. Originally Smith allowed Turzitti to bet with Smith as Smith's own account but Turzitti's bets became too large for Smith to handle (Tr. 109).

In October, 1973, Smith advised Joel Glickman that "Tony" was giving him big bets. Turzitti was losing several thousands of dollars (Tr. 112). Turzitti owed Smith and Glickman money. Lazzerini owed Turzitti money. Turzitti wanted to transfer the money owed to him by Lazzerini to Smith and Glickman to pay the debt owed by Turzetti to Smith and Glickman (Tr. 113-114).

Glickman agreed to the transfer of debts at a meeting with Turzitti at Vannie's Restaurant in October (Tr. 115). Smith was supposed to collect the money from Lazzerini but Lazzerini paid "not a dime." (Tr. 117).

Smith brought Glickman to Lazzerini's restaurant in an effort to collect the money. Lazzerini "whined a lot" and said he would pay as soon as he was able. Smith continued to accept bets from Turzitti after the meeting at Vannie's (Tr. 118).

On October 22, 1973, Mr. Smith, Mr. Glickman, Mr. Turzitti and Mr. Riccio met at Vannie's Restaurant. Turzitti had cheated Smith on a bet and the meeting was an attempt to "try to iron out the situation". Smith and Glickman gave in and Mr. Glickman, " . . . not wanting any problems about anything, just said 'Forget about it.' "

After the above meeting Smith accepted no more sports wagers from Turzitti. Smith continued to make telephone calls for Glickman to Glickman's customers (Tr. 120).

Cross Examination of Hal C. Smith

The reason Lazzerini owed Turzitti and Riccio money was that he had accepted wagers from them on horses (Tr. 123). Smith never accepted any wagers from Riccio. He understood that Turzitti and Riccio bet as a "combo" (Tr. 124).

At the time Smith accepted the bets that were overheard on the wiretaps he did not know that Turzitti and Riccio were betting as a "combo" (Tr. 125). Smith has read all the transcripts regarding conversations between Riccio and Turzitti. Smith would definitely classify Riccio's transactions as those of a bettor. Had Smith known that Turzitti was betting for Riccio he would not have taken the bets because Riccio had a reputation as one who liked to collect but didn't like to pay if he lost (Tr. 126).

At the request of defense counsel, Smith read all the transcripts of all 300 wiretap conversations. Based on

reading the transcripts he now knows that Turzitti and Riccio swindled him on the Pittsburgh game (Tr. 127).[3]

His definition of a layoff bet is as follows: ". . . if you feel that you are carrying too much money on a game, on one particular game, you will lay off a portion of that, of the moneys bet on that game." In all the transcripts he read of conversations from the 10th to the 23rd not one dime bet with him by Turzitti was a layoff bet. Every bet that Turzitti made was a combination of his own money with that of Mr. Riccio (Tr. 128).

At the time Turzitti was betting with Smith, Turzitti claimed that he was laying off bets to Smith and Smith thought they were dealing together (Tr. 129). But Turzitti wasn't laying off and Smith did not care because all he wanted to do was to beat Turzitti. As an accommodation to Turzitti, Smith would hold the same line for Turzitti for a half hour or forty-five minutes. This meant that although he might change the line on the game for his own customers he would keep it at the same figure as he originally gave it to Turzitti for the half hour or so. (Tr. 130).

The phrase "lamp posting" in bookmaker's parlance means that a gambler creates an imaginary player with the intent of eventually not paying for the bets made by the imaginary player. In a conversation between Riccio and Turzitti on October 21 or 22, this is just what Riccio suggests that Turzitti and he should do to Smith. (Tr. 131).

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[3] This "swindle" concerned Turzitti placing a bet with Smith and later claiming that he had bet on the winning rather than the losing team. In fact, as the tapes clearly proved, Turzitti had bet on the loser, Smith had repeated the bet three times to him confirming it, and Turzitti did cheat Smith and Glickman.

Smith was a bookmaker who had some customers of his own. He also handled four or five customers for Mr. Glickman. Glickman was at Arlington Park Racetrack while Smith was handling these customers (Tr. 132).

Not only was Glickman beaten out of money by Riccio and Turzitti as a result of the swindle on the Pittsburgh game but Lazzerini never paid him either (Tr. 133). While the transfer of the moneys owed by Lazzerini to Riccio and Turzitti took place in everyone's mind, no money was ever transferred (Tr. 133).

Glickman had no involvement and no relationship in the Lazzerini situation, it was Smith's account entirely. Smith never accepted a horse racing wager from Turzitti (Tr. 134).

From reading the transcripts Smith knows that Turzitti had another bookmaker who was called Yussi or "K". Turzitti's motivation was to beat Yussi just the way he wanted to beat Smith and Glickman (Tr. 135).

Turzitti used the fact that he could bet with two separate bookmakers to his advantage by betting the bookmaker with the most attractive odds on a game (Tr. 136).

Smith defined what "siding" a game is and also what "jacking" a game is. Turzitti and Riccio used Smith and Yussie to "side" seven games on one day; that is recorded on the tapes (Tr. 137-138).

In reading the transcripts Mr. Smith noticed that Turzitti was carrying on a little bookmaking on the side. The following was asked:

> "Q. Was there any relationship between his bookmaking activities on the side and the amounts of the bets that he made to you?
> "A. None whatsoever." (Tr. 143).

* * *

> "Q. And could you see any relationship between his piddling little bookmaking operation and the amounts that he was betting with you?
> A. None whatsoever." (Tr. 144)

Testimony of Joseph Levi

He is an office manager for an attorney. He lives in Niles. He has known Rudy Riotto for approximately eight years (Tr. 148). In October, 1973, he bet $100 on the world series. He won the bet and Riotto paid him (Tr. 149).

Cross Examination

Riotto was a neighbor of his in Niles (Tr. 149). They were social friends and when he won the World Series bet Riotto came over to his house and paid him (Tr. 150). Over a three year period, including the $100 World Series bet, he bet Riotto $25 on a football game and also a $2 bet on a horse race (Tr. 151).

Testimony of Joe Levinson

He works for Reece Distributors as an inside manager and resides in Niles (Tr. 153). In October of 1973, Riotto furnished him with a line and he would bet $10 or $20 on football games (Tr. 154). He placed the bets by calling Riotto at the gas station which Riotto owned. They would meet socially once a week and settle up (Tr. 155). When he lost he paid a commission of 10% (Tr. 156).

Cross Examination

He and Riotto were neighbors (Tr. 156). He visited Riotto at Riotto's home and Riotto visited him at his home. They also played cards and went to the harness races together (Tr. 157), and went bowling together (Tr. 158).

Occasionally he would place a bet with Riotto for a friend, Ronnie Goodman, who worked with him (Tr. 160). Riotto had trouble keeping Goodman's and Levinson's bets straight (Tr. 161). He would settle up with Riotto whenever they met socially.

Testimony of Arthur Miller

He lives in Skokie and is a vice-president for a tie manufacturing company (Tr. 164). He bet professional football games with Riotto (Tr. 165). He would bet between ten and thirteen professional football games a week (Tr. 165). He would bet between $10 and $25 per game (Tr. 165). He and Riccio would settle up at the end of the year (Tr. 166).

Cross Examination

He complained to Riotto that he (Riotto) was not keeping the bets straight. There was always a difference of opinion as to how much he had won (Tr. 169). Most of the time he was right and Riotto agreed with him (Tr. 170). He possibly bet $5 on some games for his son with Riotto (Tr. 172).

Testimony of Gus Lazzerini

Mr. Lazzerini owns a restaurant at 331 West Superior Street, Chicago, and has been in the restaurant business for forty years. Sometimes he has accepted wagers at the restaurant and he had also made wagers (Tr. 176). In September and October, 1973, he was accepting bets (Tr. 177). At that time he would give Mr. Smith his own bets as well as go partners with Mr. Smith on the bets that people were giving him (Tr. 178). In that time period he accepted baseball wagers from Anthony Turzitti (Tr. 179). He might have sometimes passed these wagers on to Mr.

Smith. Also during that period of time Mr. Riccio gave him bets on horses which Mr. Lazzerini kept. Riccio won around $5,000 and Mr. Lazzerini paid him (Tr. 180).

Cross Examination

In September and October of 1973 he was both a bettor and a bookmaker, making and accepting wagers on horses, baseball and football (Tr. 186-187). He and Hal Smith were partners as bookmakers. When he accepted bets he notified Smith of the bets he had accepted (Tr. 187). At the same time he placed his own bets with Smith. In these instances he was simply a bettor (Tr. 187). In September or October of 1973 he took bets from Turzitti (Tr. 188). If Turzitti would bet $100 on a game and Lazzerini liked the same team he would bet Smith $200 on the game, thereby becoming the bettor (Tr. 189).

He first met Riccio (never knew his first name) at the restaurant (Tr. 193). Riccio gave him seven horse bets one day and he went to the track and watched the horses win. He had to borrow money to pay Riccio (Tr. 193).

Testimony of F.B.I. Agent Francis J. Cross

After reviewing his qualifications, Agent Cross was tendered to and accepted by the court as an expert witness (Tr. 196-198). Cross then gave some generalized observations regarding the operation of a gambling business (Tr. 198-204). Agent Cross then gave the following definition of a "lay off" bet:

> "A. Well, that's one of the ways that a bookmaker can balance his books. If the action, that is, the wagering action, activity, generated by his business—his customers are coming in and it is out of balance, he has more bets on one side of the contest than on the other, then he must either encourage additional wager-

ing on the low side by changing his line spread or his point spread in order to attract more wagering that way, or he can take the excess and lay it off, which simply means that he takes the excess that keeps him out of balance and bets it with another bookmaker within the practice of accepting lay off wagers, or exchange it with another bookmaker, so they can exchange lay off in order to balance his or both of their books." (Tr. 204)

He then defined "middling" (Tr. 205). He then made some more generalized observations about the gambling business (Tr. 206-208).

He examined the approximately 300 conversations involving Anthony Turzitti and others for the period October 10 through October 23, 1973. Government Exhibit 3 is the transcripts of those conversations; it was admitted into evidence (Tr. 209).

The following opinions were rendered by Agent Cross regarding persons whose conversations he read in the transcripts upon which he relied in forming his opinions:

Anthony Turzitti is a bookmaker accepting wagers from Randolph Riotto, Charles Naponelli and Vincent Palucci, who worked for Turzitti. Turzitti laid off his wagers to Hal Smith and Yussi or K (Tr. 211). The bettors whom he identified from the transcripts are Levinson, Miller, two people named Gallios, LaManna and LaPlaca. Bets were accepted on horse races, football and baseball. Riotto accepted wagers and phoned them in to Turzitti (Tr. 212). Riotto received line information from Turzitti (Tr. 213).

Charles Naponelli accepted horse race wagers for Turzitti. Vincent Palucci accepted sports wagers for Turzitti; he got line information from Turzitti (Tr. 214). Turzitti got his line information from Yussi or K. and Hal Smith.

In some instances these lines differed. Turzitti did not tell either Riotto or Palucci of his sources of line information. He did discuss his line sources with Roger Riccio, to whom he furnished both lines (Tr. 215).

Turzitti laid off his wagers to Yussi or K. and Smith. Riccio told Turzitti which teams to bet on and where to place his bets—either with Yussi or K. or with Hal Smith. Turzitti accepted wagers from Roger Riccio which he included in his layoff bets to Yussi or Smith (Tr. 217).

Turzitti relied on Riccio in determining how much to bet. He would increase the bet made by Riccio, adding money of his own. Turzitti also accepted bets from other persons other than those named by the expert (Tr. 218).

It is not normal in the gambling business for a bookmaker to accept advice from a bettor in making his layoff bets (Tr. 220).

Joel Glickman, whose voice does not appear on any tapes or in the transcripts, is the superior to Hal Smith (Tr. 220). Smith was an employee of Glickman, accepting layoff wagers and running a part of the office (Tr. 221). Both Riccio and Turzitti knew that Smith was working for Glickman. In one conversation, Turzitti indicated to Riccio that Smith would not accept his bets any longer.

Turzitti and Smith had an argument over which side of a game Turzitti had bet on. After an argument Smith agreed to pay but would not take any more bets from Turzitti. Turzitti had deliberately cheated Smith and Riccio; Turzitti was amazed that Smith was going to pay the bet and then stop taking Turzitti's future bets (Tr. 223).

Agent Cross gave the following tabulations for bets received by Turzitti each day between October 10 and October 22, 1973:

On October 12, 1973, $1,570;
October 13, 1973, $6,815;
October 14, 1973, $7,645;
October 15, 1973, $2,170;
October 16, 1973, $575;
October 17, 1973, $70;
October 18, 1973, $16;
October 19, 1973, $2,550;
October 20, 1973, $9,755;
October 21, 1973, $7,530;
October 22, 1973, $587. (Tr. 225)

This totals $40,638.

The total amount that Turzitti bet with Hal Smith during this period was $41,800. These bets broken down for each day were:

On October 12, 1973, $2,000;
October 13, 1973, $7,000;
October 14, 1973, $8,500;
October 15, 1973, $1,500;
October 18, 1973, $5,500;
October 19, 1973, $3,000;
October 20, 1973, $10,800;
October 21, 1973, $3,500. (Tr. 226-227)

The total amount which Turzitti bet with Yussi or K. during this period was $17,100. These bets broken down for each day were:

On October 13, 1973, $4,000;
October 14, 1973, $2,000;
October 18, 1973, $4,500;
October 20, 1973, $3,600;
October 21, 1973, $4,000. (Tr. 227)

Cross Examination

Agent Cross wrote one report in March of 1974 regarding this case and wrote another one in March of 1975 (Tr. 231). The report for October 18, 1973 states that Turzitti

received $16 (sixteen dollars) in bets on that date and bet a total of $10,000 with Smith or K (Tr. 234). The agent would be surprised to know that this $10,000 is the amount that Riccio and Turzitti combined to bet, together themselves, that date.

In going through the transcripts from the 10th to the 23rd there is not one instance in which Riccio called Turzitti with a bet that Turzitti kept. There is not one instance in which Turzitti did not add his own money to the amount bet by Riccio and then bet with Smith or K (Tr. 237). Roger Riccio generated the biggest activity for Turzitti (Tr. 241).

> "A bookmaker will occasionally make a bet, but when a bookmaker makes too many bets he ceases to be a bookmaker and becomes a bettor and he takes the chances which he knows are inherent in the business; he has to give up the vigorish, he takes all the chances and he doesn't stay in business very long.
>
> It is just like a bartender who becomes a drinker." (Tr. 241)

In answer to the question, "Is it unusual for a bookmaker to also be a bettor?", the witness stated: "It is not unusual; it isn't the usual—it is not a regular thing."

When Riccio would call and request that Turzitti bet $600 on a game for Riccio, and Turzitti would then put $400 of his own money in and bet $1,000 on the game, Turzitti was ". . . taking a flyer trying to win money that way. He is betting." (Tr. 241) Occasionally, when there was a change in the line, Turzitti was able to make a bet at a better price and so informed Riccio. That is not the normal relationship between bettor and bookmaker (Tr. 242).

Riccio and Turzitti were combining their bets and putting them with Smith or Yussi (Tr. 243).

At 6:03 p.m. on October 12, 1973, Riccio called Turzitti and told Turzitti to make two bets—"$6, Matlock v. Holtzman, plus 35; and $6, Miami minus 6" (Tr. 282).

At 6:05 p.m. on October 12, 1973, Turzitti called Smith and said: "I need Matlock tomorrow, Matlock v. Holtzman, plus 35 for a dime . . ." Turzitti also bet Miami minus six for a dime with Smith, a dime being $1,000. The following then took place:

"Q. So, two minutes after Riccio telling him what bets to make, he makes those bets, doesn't he?
A. He makes those bets plus an increased amount.
Q. Right.
A. He accepts six and he lays off a dime, so he has got—he increases it with $400 extra over what he took in to increase it to a dime.
Q. I see. And you tell us that that is a layoff.
A. That's the way I described it at the time in my notes even; when a bookmaker bets with a bookmaker, I call it a layoff.
Q. Even if it is not a layoff, you call it a layoff?
A. Well, this I called a layoff because it was a bookmaker betting with another bookmaker.
Q. All right. Well, that's your definition of a layoff—
A. Yes. I said so.
Q. All right. Didn't you tell us before that a 'layoff' was to balance so that the bookmaker could appreciate his profit on the vig?
A. Well, there are many, many reasons for a layoff and there are many possible explanations for this particular one, but I couldn't select any one.
Q. This couldn't be 'bearding', could it?
A. Yes, it could.
Q. It could be bearding?
A. Yes.
Q. Then in that case it wouldn't be a layoff, would it?
A. No, it wouldn't." (Tr. 283, 284)

Of the $1,355 that the witness says Turzitti received in bets on October 12, $1,200 represents the two six hundred dollar bets that Riccio asked Turzitti to bet for Riccio. And the $2,000 bet on October 12 by Turzitti with Smith represents the Riccio bets plus $400 apiece of his own money that Turzitti added to the Riccio bets. Without the Riccio bets Turzitti's activity from other people for October 12 was $155 (Tr. 284-285).

In the entire thirteen days of wiretapping there is not one instance where Turzitti called in a horse race bet, round robin or parley to Smith although he received such bets from Vince Palucci (Tr. 292).

In computing the bets received by Turzitti, the witness included the bets made by Turzitti for Riccio (Tr. 292).

The agent's figures for October 18, 1973, for Turzitti's activities are as follows:

Received	*To Hal (Smith)*	*To K*
$16.00	$5,500.00	$4,500.00

The $16 represents horse racing bets phoned in by Naponelli (Tr. 294).

On October 12, Turzitti called Riotto and told him that if a guy wants to bet $100 not to accept that much and only to take $25 or $30 (Tr. 281). Thirteen minutes later Turzitti receives a call from Riccio and two minutes later Turzitti calls Hal Smith and bets two sporting events for $1,000 apiece ($600 for Riccio and $400 for himself) (Tr. 283). Later that night Vince Palucci called in a round robin on three teams totaling $75 (Tr. 290-291). Palucci also called in several other bets, the highest wager being $60 (Tr. 292).

On October 18th Turzitti received $16 in horse bets from Naponelli. Turzitti bet Smith and K a total of $10,000, approximately one half hour later (Tr. 295-297).

On October 20, 1973, Riccio and Turzitti bet $14,000—$10,800 to Smith and $3,600 to Yussi (Tr. 301). The following was stated:

> "Q. And the reason that you and I can agree so quickly when I say that those bets are both Turzitti and Riccio is because we know that no bet that was ever received by Turzitti from anyone, from anyone but Riccio, ever went to Yussi and K, or to Hal Smith, isn't that right?
>
> A. You may know it but I don't know it.
>
> Q. Well, you have no evidence to dispute that, do you?
>
> A. So far as this transcript is correct, yes." (Tr. 301)

In all of the conversations in the transcripts there is not one instance in which Riccio indicates that he is taking a bet. There is not one conversation in which Riccio indicates that he is betting for anyone but himself. There is not one conversation in which Riccio indicates that he is collecting a bet from anybody. There is no conversation in which Riccio indicates that he is "laying off" to Turzitti (Tr. 308).

In all of the conversations Riccio calls Turzitti, asks him for the line and then calls back and tells Turzitti which bets he wants Turzitti to make for him and to whom the bet should be made, based on which of the two bookmakers—Smith or Yussi—has the more favorable line. ". . . when it is the same, he indicates that it does not make any difference," where Turzitti places the bet (Tr. 309).

On one occasion Naponelli told Turzitti that he received a $60 bet on the Mets and gave half of it to Steve (Tr. 302). Another time a person named Johnnie begged Turzitti to take a $20 daily double. Turzitti finally took a $12

double (Tr. 303). The largest bet Turzitti received was about $100 (Tr. 304).

When the witness examined the transcripts for the first time in March, 1974, he stated that "Roger Riccio, John LaPlaca, Charles Naponelli, Joe LaManna, Jimmy Gallios, Vanny Gallios and Vincent Palucci place wagers with Anthony Turzitti." (Tr. 312).

When the transcripts were re-submitted to him in March, 1975, he stated, ". . . it could not be determined from the transcripts that Roger Riccio is a bookmaker working for Turzitti and it also could not be determined that he is helping Turzitti in the supervision and management of Turzitti's gambling business. . ." (Tr. 313).

When Turzitti placed bets with Smith or Yussi for Riccio, Turzitti would always increase the bet by adding his own money to the side selected by Riccio (Tr. 328). The following was said:

> "Q. . . . Then in March of 1974 you knew that Riccio and Turzitti were combining the money and placing wagers with Hal Smith and Yussi, is that right?
>
> A. Yes, as a result of my examination I knew that Mr. Turzitti was increasing the amount received by him from Mr. Riccio before laying it off to either Mr. Smith or Yussi, whichever one had been designated by Mr. Riccio.
>
> Q. Well, you say 'laying it off' now, but actually he was placing a combined bet, isn't that right?
>
> A. He was placing a bet, yes, with—
>
> Q. Placing a bet?
>
> A. With one of two individuals, yes."

In his second report the witness stated: "The determination of which teams to bet on is made by Riccio and Turzitti places the bets. Riccio is aware that Turzitti is

combining his own bets with Riccio and is placing them with Hal Smith and Yussi." (Tr. 329).

Taking into account the name of every person mentioned in the transcripts who made a bet, there is not one instance in the entire transcript where any bet made to Turzitti ended up with Hal Smith—with the exception of those placed by Turzitti for Roger Riccio (Tr. 407-408).

The following was said at pages 414-415:

"Q. Okay. As a matter of fact, according to your theory of the lay off, the only thing that he does lay off is the stuff that Riccio gives him, to which he puts his own money, isn't that right?

A. It is not according to my theory, it is according to my examination. I was able to determine that the majority of the bets that he placed with Hal and with K. were received from Riccio.

Q. The 'Majority'?

A. Well, the—

Q. The majority or all of them?

A. Well, he didn't receive all of them from Riccio. He added it to those amounts. From the time that Riccio gave them to him until the time that he placed them—if Riccio gave him six, he bet a dime, and he indicated to Riccio that four of it was his, that three would be Riccio's, that two would be his. I mean—

Q. Did he keep one penny of Riccio's money?

A. Not that I could determine.

Q. Did ten minutes ever elapse from the time that Riccio gave him a bet to make that it wasn't made?

A. Shortly thereafter.

Q. Did he ever make a bet without calling back Riccio and telling him that Riccio's bet was placed?

A. Not that I recall.

Q. Did he call him, give him the points, the line, the spread, give him the line—

A. He called him, he got the total, told him that he got the line, and he gets the line—

Q. He did?

A. Yes.

Q. Well, where does that indicate—what does that indicate about the relationship?

A. That the relationship is not a relationship of a mere bettor to a bookmaker. It is a bettor to a bookmaker—

Q. More or less partners?

A. They are associated in placing bets, yes." (Tr. 414-415).

On October 10, Joe Levinson (a bettor) called Riotto at his gas station. Riotto complained to Levinson that he could not get out of bed in the morning because he stayed at the station until 7:00 p.m. (Tr. 347). Riotto also complained that he had to work at the station on Sunday since his employee did not come to work (Tr. 348). Then Riotto and Levinson discussed bowling and why Riotto dropped out of the bowling league (Tr. 349). Then Riotto and Levinson discussed the Arab-Israel war and the possibility that the gas station may not be able to get oil (Tr. 350).

On October 14th Turzitti and Riotto had a conversation. Riotto gave the bets to Turzitti (Tr. 352). Referring to a bettor named Art, Riotto informed Turzitti that Art made 13 plays and another bettor made 13 plays. One guy bet a nickel and the other bet a quarter. The following occurred:

Tony: "What do you mean for a nickel?"
Rudy: "$5."
Tony: "$5 a piece?"
Rudy: "Yeah." (Tr. 353-354)

Turzitti then told Riotto not to take "fins" and to try to take "saw bucks" (Tr. 355).

On October 14, 1973,[4] Riotto did not know that a nickel is supposed to mean $500. To Riotto a nickel was $5 (Tr. 357).

On October 10, 1973, Riotto received $20 worth of bets on horses running that day at Sportsman Park (Tr. 366).

Only four people (Levi, Levinson, Miller and Kodish) bet with Riotto (Tr. 366). They were all friends of his (Tr. 367). The general method of payment between bettor and bookmaker is cash (Tr. 368). Levinson paid Riotto by check when he (Levinson) lost $100 (Tr. 158, 369) and Riotto sent Miller a money order by telephone (Tr. 168, 370). On October 20th, Riotto phoned in a $25 bet to Turzitti (Tr. 404).

On October 20 at 11:20 a.m. Riccio called Turzitti and asks for Yussi's line. Riccio wanted both Smith's line and Yussi's line before deciding what bets he (Riccio) and Turzitti were going to make. At 11:25 a.m. Turzitti called K. and got the line (Tr. 417).

At 11:39 a.m. Riccio called Turzitti, was told K.'s line and gave Turzitti some bets to make, telling Turzitti where to place the bets. Riccio told Turzitti "Favor Hal (Smith) in the games that you could go either way with because of our situation with Gus, do you understand?" (Tr. 418)

Riccio indicated that he was shopping.

The following was stated:

> "Q. And that's because he wants to get the best possible line and he doesn't care whether the bet is placed with Hal, with Yussi or with anybody else that will give him another nickel on the line, right?

[4] October 14th was the last transcript of any conversation on Riotto's phone. The transcripts concerning Riotto's phone were for October 10, 12, 13 and 14.

> A. He wants the best possible line.
> Q. All right, fine. He's certainly not in business with Hal Smith or Yussi and K. with respect to this bet, is he?
> A. No.
> Q. As a matter of fact, he is their adversary, isn't he?
> A. He is the customer.
> Q. Yes. Well, that's an adversarial relationship in bookmaking, isn't it?
> A. They don't always look at it that way but that is what it is, yes.
> Q. Yes. As a matter of fact, that's Roger Riccio's entire relationship to both Smith and K. during this entire two weeks, isn't it?
> A. As far as I could determine it, yes." (Tr. 419).

The conversation of 11:39 resulted in Riccio asking Turzitti to place $8,400 in bets for Riccio (Tr. 420).

At 11:46 a.m. Turzitti called Yussi and bet $3,600.

At 11:48 a.m. Turzitti called Smith and bet $9,000. Of the total of $12,600 bet by Turzitti with Smith and Yussi, $8,400 was Riccio's and $4,200 was Turzitti's. The following was stated:

> "Q. Okay. Does he seem very interested in balancing his books for that vig that is so important?
> A. It is not apparent to me, no." (Tr. 421)

Shortly thereafter Turzitti called Riccio to verify that the bets that Riccio wanted were made—seven bets with Smith and three with Yussi.

At 11:55 a.m. Mike called and gave him five $20 bets on football games (Tr. 421).

At 12:06 p.m. Vince calls and bets six games for a total of $160 (Tr. 422).

Turzitti was supposed to "side" the Columbia-Yale game but made a mistake. The conversation made it clear that Riccio and Turzitti were partners (Tr. 422).

There was no day, during the entire period, where there was more than $1245.00 bet into Turzitti excluding the monies that he and Riccio wagered with K. and Smith (Tr. 431-434).

WITNESSES FOR DEFENSE

Testimony of Roger Riccio

He has known Anthony Turzitti for ten years from around the Taylor Street neighborhood (Tr. 502). He has been a gambler for 22 years. He bets on horses and sporting events. He never placed a bet with Turzitti. He and Turzitti bet on games together. In September and October, 1973, he needed Turzitti to place bets for him, (Tr. 503) because no bookmaker would accept his action (Tr. 504). During this time he was betting between $500 and $800 a game. Turzitti was betting K. and Hal Smith. Turzitti told him who he (Turzitti) was giving bets to (Tr. 504).

Whatever team Riccio played, Turzitti would follow Riccio's selections and add to Riccio's bet, placing a single bet (Tr. 505). Riccio would direct Turzitti where to place the bets, depending upon who had the most favorable line (Tr. 505). Riccio never worked for Turzitti nor assisted Turzitti in his bookmaking operation (Tr. 506).

With reference to Hal Smith and K., Turzitti was Riotto's beard since that was the only way Riotto could bet on the games (Tr. 506).

The bets that he was making were obviously not layoff bets (Tr. 506) since "I wasn't accepting no bets from nobody. I was betting my selection with Mr. Turzitti and he was adding on to my bets. It's simple." (Tr. 507).

As an example, if he called Turzitti and wanted to bet Pittsburgh minus 18½ for $600 and he (Turzitti) liked

the team Pittsburgh was playing and he (Turzitti) would hold $300 of the bet and give away $300 to Smith that would be a layoff (Tr. 507).

With respect to K. and Smith, Turzitti was a bettor (Tr. 508).

Riccio never received bets from other individuals and turned them over to Turzitti (Tr. 509).

Turzitti would call him back and inform him who he had bet on for them (Tr. 509).

Cross Examination

His relationship with Turzitti is that they are both bettors (Tr. 511).

Testimony of Charles Naponelli

He is 68 years old and was a sheet metal worker. He is now retired (Tr. 514). He has known Turzitti since 1948. Turzitti married his niece (Tr. 515). He opened up the tavern and cleaned it up for Turzitti (Tr. 515). He took calls at the tavern when Turzitti was not there. He took orders from some salesmen. Two or three people used to call to place wagers on horses (Tr. 518). He would write it down and give it to Turzitti when he came in (Tr. 519). The sizes of the wagers were between $2 and $10. Once in a while a bet would be for $20 (Tr. 519).

He bet $2 once in a while with Turzitti (Tr. 500).

Testimony of Anthony Turzitti

He lives in Palatine with his wife and son (Tr. 523). He owns a tavern located at 1121 South Racine, Chicago (Tr. 524). He began gambling 30 years ago while in the army (Tr. 524-525). He was a bookmaker to a certain extent.

His bookmaking started out at the tavern where customers would bet $5 or $10 while watching football games on T.V. He used to love to go to the track and people would give him money to take out to the track and bet and if he needed money he would just put it in his pocket (Tr. 525).

As a bookmaker he never laid off any bets he received.

> "How could you lay off a $10 bet? Whose going to take it?" (Tr. 526).

As a bettor he placed bets with whomever he thought would pay (Tr. 526). In the fall of 1973 he bet with Hal Smith and K. and possibly several others (Tr. 526).

He never employed anyone to assist him in his bookmaking since there wasn't enough business (Tr. 528). He has known Riotto for about 30 years. Riotto never worked for him. He took wagers from Riotto once in a while (Tr. 531). He knows Hal Smith. He would phone Smith and give Smith his and Riccio's bets (Tr. 531-32). Riccio did not place bets with Turzitti as a bookmaker since Riccio had better sense and knew that Turzitti could not afford to pay him if Riccio won (Tr. 532).

Nobody would take Riccio's bets and since Turzitti's credit was good they would bet with other bookmakers and try to beat them (Tr. 533). He would add his own money to Riccio's bets and place a single bet with Hal Smith or K. (Tr. 533). When he did this he was not laying off (Tr. 533).

He knows Gus Lazzerini and in 1973 he and Riccio bet Lazzerini and won, although they never collected the money (Tr. 534). In 1973, he met with Glickman and told Glickman he was broke. Glickman agreed to accept, in part settlement of his (Turzitti's) debt the money that Lazzerini owed him (Tr. 535).

On occasion, because he was broke, he tried to leave Smith with the impression that he was "Laying off"[5]—yet Smith couldn't care less since Turzitti was losing (Tr. 537). Lazzerini never paid Glickman the money after the transfer (Tr. 538).

Cross Examination

When Smith told him, during one of their conversations, that they were taking 3's from everybody else but could take up to nickels for his guys this was because Smith didn't know what was going on and Smith thought Turzitti had customers. "Since we (Turzitti and Riccio) were betting $800 a crack he had to make him (Smith) believe that we had customers." It was just shop talk since "we had no money and were busted out" (Tr. 541).

CONVERSATIONS PLAYED TO THE JURY

From the approximately 300 gambling related conversations overheard over the three wiretaps during a thirteen day period, the government elected to play fourteen for the jury. Presumably these are the most incriminating and the strongest to substantiate the government's theory. Transcripts of these conversations, along with an index indicating the date, time, telephone number and participants were furnished to the jury.

Three sets of the above transcripts have been filed with the record on appeal. These conversations are filled with

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[5] The purpose of this play was to give Smith the impression that the money Turzitti was losing would be paid by the bettors who supposedly lost to Turzitti. If Smith and Glickman knew that Turzitti was bearding for Riccio, and Turzitti was broke, Turzitti and Riccio would have been cut off since Turzitti couldn't pay and Riccio had a reputation for not paying. The desperate straits these two gamblers were in was exemplified by the swindle they pulled on Smith in the Pittsburgh game.

ellipses, vague and confusing references, gossip and ambiguities. Some parts simply defy summarization.

Because the defendants have raised the sufficiency issue, it is hoped that the panel will read these transcripts *in toto*. These conversations capture the essence of the government's case. They also support the defendants' theory that there was no five man operation of a single gambling business as contemplated by the statute.

Conversation No. 1. Turzitti calls Smith. They discuss the baseball line. They discuss the fact that Gus Lazzerini owes both of them money. They make an appointment for Joel Glickman to meet Turzitti the following afternoon to discuss the Lazzerini situation.

Conversation No. 2—La Placa calls Turzitti's tavern and Riccio answers. What follows cannot be summarized. There is a discussion of two different baseball lines and whom to bet; the sanity of Gus Lazzerini and the insanity of anybody who bets with Gus Lazzerini; the respective ability to pay and to honor of several bookmakers; where a bet on the baseball game should be placed; the fact that Joel Glickman is meeting Turzitti the next day; which pitchers are starting in the baseball game; the treacherous nature of one of the patrons of Turzitti's bar and which bookmakers will pay if they both make a bet on the game and win.

Conversation No. 3—Turzitti calls Smith and gets a football line. Turzitti says that he and Riccio have now spoken to Glickman and they have reached an understanding regarding the money owed to each of them by Lazzerini.

Conversation No. 4—Turzitti calls Riccio and gives him two line changes. He then castigates Riccio for not concentrating more in making his selections for betting thus

causing both Turzitti and Riccio to lose the bets they are placing with Smith.

Conversation No. 5—Turzitti calls his tavern and speaks to his uncle Charlie Naponelli, who works there part-time. After getting a reading on the cash register, the two discuss a few small bets given to Naponelli for Turzitti.

Conversation No. 6—Riccio calls Turzitti and tells him to make the following bets with the following bookmakers:

Boston College —7 for $600	"You could give it to either guy."[6]
Yale —13 and ½ for $1000	"This you got to give to Hal. (Smith)"
Wisconsin +22 for $800	"That goes to Hal."
Minnesota — 4 for $800	"That goes to Hal."
Tennessee +14 for $1,000	"You could give it to anybody. Wanna give it to Yussi?" "Yeah."
Oklahoma State +6 and ½ for $800	"You could give it to anybody."
Texas —13 for $800	"You got to give this to Hal."
So. Methodist Univ. —12 and ½ for $1,000	"Goes to Hal again."
LSU for $800	"LSU could go to either guy Tony. I'm sorry."
Tulane —8 and ½ for $800	"You gotta give this to Hal."

[6] Later in the conversation Turzitti and Riccio reaffirm the decision to give the bet to Yussi. Turzitti says, ". . . you better give it to Yussi," and Riccio replies: "The other guys thirteen and a half." This shows they are shopping for the most favorable line. How can they be partners or in business with the bookmakers they are trying to beat when they retain the option not to even bet with the same bookmaker each time?

Conversation No. 6 ends as follows:

"Riccio: Alright. I'll call you back . . .
Tony (Turzitti): Yeah, lemme . . .
Riccio: Call me back and let me know, now.
Tony: All right."

Conversation No. 7 follows conversation No. 6 by nineteen minutes.

Turzitti calls Riccio and tells him what games they bet with what bookmaker and at what price they bet the games. Turzitti closes the conversation by telling Riccio that he hopes that they make some money today.

Conversation No. 8—Riccio calls Turzitti. They discuss the Pittsburgh swindle of Glickman and Smith. Turzitti explains to Riccio how badly he felt ("like a goof") while lying to Smith about the Pittsburgh game and was extremely surprised when Smith gave them that game. Turzitti tells Riccio that Smith cut them off and would no longer take their bets. Riccio could not understand why this was done.

Riccio also suggests they renege on the agreement reached with Glickman concerning the transfer of money. He suggests they get the money Lazzerini owes them and tell Smith and Glickman that they'll give them $500 a month.

Turzitti pleads with Riccio that if they lose a game that Riccio pays his portion of the bet so that Turzitti can pay Yussi. Turzitti tells Riccio that his blood pressure is up and he's dizzy because he can't take the pressure.

Conversation No. 9—Turzitti calls Smith. After discussing the fact that Lazzerini likes to gamble but does not have the money to pay if he loses, Smith gives Turzitti the football line for both college and professional teams as well as the world series. Smith verifies the meeting that Glickman is to have with Turzitti. Smith asks Turzitti

not to tell Glickman that Turzitti has Smith's telephone number.

This conversation occurred 10 days prior to conversation No. 8.

Conversation No. 10—Turzitti calls Riotto. Turzitti tells Riotto the Miami game is now 10 points. Riotto gives Turzitti 3 bets on the Miami game totalling $50. Riotto tells Turzitti he's waiting to hear from one more bettor.

Conversation No. 11—A bettor, Ritchie, calls Turzitti's tavern and Charles Naponelli answers the phone. After Naponelli tells him Turzitti is not in, Ritchie leaves the following bets with Naponelli:

a) a daily double bet.

b) a parlay on the 5th and 6th race.

Ritchie bet a total of $12.

Conversation No. 12—Another bettor, Ed, calls Turzitti's tavern and Naponelli answers. Turzitti is not there, so Ed gives Naponelli $130 worth of horse racing bets.

Conversation No. 13—Vince Palucci calls Tony at home. Tony tells Vince not to give a person any more money and then gives Vince a football line.

Conversation No. 14—Vince Palucci calls Tony at home and gives him $105 in football bets.

REASONS FOR GRANTING THE WRIT

THE SEVENTH CIRCUIT'S CONSTRUCTION OF TITLE 18, UNITED STATES CODE, SECTION 1955, IN THIS CASE CONFLICTS WITH THE CONSTRUCTIONS OF ALL OTHER CIRCUITS.

Title 18, United States Code, Section 1955, does not make all bookmaking operations subject to federal criminal jurisdiction. In order to sustain a conviction under that section, beyond a reasonable doubt, *inter alia,* that the gambling business "involves five or more persons who conduct, finance, manage, supervise, direct or own all or part of such business . . ." 18 U.S.C. 1955(b)(1)(ii). Thus, in the instant case, the government was required to prove that appellants Joel M. Glickman and Anthony Turzitti conducted, financed, managed, supervised, directed or owned a single gambling business with at least three others.

Congressional intent and case law have clearly held that persons who merely bet with a bookmaking business cannot be counted in reaching the five or more persons element of the statute. This is true no matter how often or how much a particular bettor wagers. *United States* v. *McHale,* 495 F.2d 15, 18 (7th Cir. 1974); *United States* v. *Box,* 530 F.2d 1260, 1264 (5th Cir. 1976).

In the instant case, the evidence showed, without dispute, that there were two separate bookmaking businesses. One was made up of two persons: Joel M. Glickman and Glickman's employee, Hal C. Smith. The second business was composed of, at most, four persons: Anthony Turzitti,

Randolph Riotto, Charles P. Naponelli and Vincent Michael Palucci.[7]

Since neither a two man nor a four man gambling business runs afoul of 18 U.S.C. 1955, the government had to show that these two businesses were somehow fused into a single, six person business before federal criminal liability could attach. In persuading the jury and, apparently, the Court of Appeals, that such a fusion occurred, the government, through its expert, employed theories which had previously been rejected by other courts of appeal as not accurately reflecting the realities of the gambling business. The Seventh Circuit's acceptance of the theories places it directly at odds with every other court of appeals which has ruled on similar theories.

Particularly, there is the matter of "lay off" betting. The government's theory of prosecution was that the two bookmaking businesses were linked together because Anthony Turzitti made lay off bets with Hal C. Smith. The defendants argued that the bets made by Turzitti with Smith were not lay off bets and therefore the critical fusion was not proved by the evidence.

It is important to note that none of the facts produced by the government were in dispute. The conflict in this case was based on the government expert's theories and the conclusions drawn therefrom.

Government expert witness, Francis J. Cross, an F.B.I. agent, defined "lay off" bet as any bet made between bookmakers. What followed was the entirely consistent conclusion that because Turzitti and Smith were bookmakers, Turzitti's bets were necessarily lay offs.

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[7] Riotto, who was convicted with the appellants, Naponelli and Palucci all phoned in occasional bets made by others to Turzitti.

The expert's definition defies logic, defies reality, and is in conflict with every prior definition of the term. In *United States* v. *Schaefer,* 510 F.2d 1307, 1311 n.5 (8th Cir. 1975), *cert. denied,* 421 U.S. 978, an accurate, functional denition of lay off bet is presented:

> "A 'lay off' bet is a bet or wager placed by one bookmaker with another bookmaker which is necessitated by the influx of an imbalance of bets and wagers on a given sporting event and which has the effect of distributing the said bets and wagers, thus minimizing the risk of substantial loss."

Thus, it is the function and purpose of the bet that determines whether or not it is a lay off; that the bettor happens to be a bookmaker is only a prerequisite. The appellants herein were convicted solely on the government expert's unsupportable theory which he apparently devised because no accepted theories could meet the facts of this case.

A bookmaker is in business to make a profit. The main source of his profit comes from the favorable eleven to ten odds a bettor must relinquish on every bet. That is, if a bettor wagers $100 on a particular game and his team wins, he will receive $100 from the bookmaker. However, if his team loses, he will owe the bookmaker $110. This 10% commission is known as "juice" or "vigorish" and it allows a bookmaker, by balancing the bets on each side of a game, to create a possibility of no risk of loss. For example, if a bookmaker has accepted $5,000 in bets on each side of the game no matter which team wins he will make $500. He cannot lose. This situation of a balanced book, with its no-risk and sure profit result, is the ideal.

It is in order to reach this goal that a bookmaker engages in lay off betting. For example, if a bookmaker accepts $5,000 in bets on Team A and $10,000 in bets on team

B, he stands to lose $4,500 if team B wins. This is a risk he may not want to take. If he does not wish to accept the risk, he will try to lay off $5,000 by betting that amount on team B with another bookmaker. By this method his books will be in balance and he has created a situation where there is no risk of loss and a sure paper profit of $500.

This, of course, is an idealized example, which does not often happen in reality. There are many times that a bookmaker cannot lay off all of his excess wagers on one side of a game. This could happen for a number of reasons, i.e., the bookmaker to whom he lays off (called an "out") also has an excess on that side and will not accept the bet, or will not accept all of it, or refuses to take bets from that particular bookmaker for some reason.

Nevertheless, the goal of a bookmaker who wishes to minimize his risk is to get wagers on each side of every game as closely in balance as possible.

Thus, certain observations concerning lay off bets can be made:

1. Lay off betting is utilized to balance wagers on either side of a game and thereby minimize a bookmaker's risk of loss.
2. A bet cannot be laid off until it is originally made. That is, if a bookmaker has no money bet on a particular game and he places a bet with another bookmaker on that game, such bet cannot be, by definition, a lay off bet.
3. The above also holds true if a bookmaker bets on a game when his books are in balance, or are heavy to the side he bets against (i.e., in the above $5,000-$10,000 example, if the bookmaker bet on team A, he leaves himself with an even greater risk of loss), or if he bets so much on his heavy

side that he throws his books out of balance in the other direction (i.e., if he bet $10,000 on team B, he would leave himself just as great a risk of loss should team A win). Bets of this type can only be considered personal bets made by a person who also happens to be a bookmaker, but, for the purposes of these bets, not made in the course of his bookmaking business.

The importance of the above concepts is that acceptance of lay off bets is one of the considerations taken into account in determining whether the receiver of the lay off bets is helping to "finance" the gambling business of the bookmaker who is laying off. In *United States* v. *Guzek,* 527 F.2d 552, 558 (8th Cir. 1975), this relationship was discussed.

> "[W]hen an otherwise independent bookmaker . . . makes lay off bets with another bookmaker . . ., the latter in effect reinsures the former's business and to that extent can be said to finance that business within Sec. 1955."

Another consideration which is utilized in the determination of whether two or more gambling operations are fused into one is the "exchange of line information". A "line" is a handicap added to one team's score or subtracted from the other team's score which is used to induce bettors to wager on the weaker team in an amount equal to that bet on the stronger team. For example, if Pittsburgh was playing Chicago, the former might be favored by 15 points. Thus, if a bettor bet on Pittsburgh, he would win his bet only if Pittsburgh beat Chicago by more than 15 points; a Chicago bettor would win if Chicago won the game or lost by less than 15 points.

An ideal line would be one which induces bettors to bet equally on either side of a game. In fact, adjusting a line is an alternative to laying off in the bookmaker's attempt

to reach the balance. In the above example, if the bookmaker found that he was receiving more bets than he wished to accept on Pittsburgh than Chicago, he might change the line to 16 in order to induce more bets on Chicago and thus balance his books.

This method is not favored by bookmakers however because it can create a disparity in the lines given by various bookmakers which alert bettors can take advantage of. For example, if one bookmaker is quoting line of Pittsburgh —15 and another bookmaker's line is Pittsburgh —17, a bettor can place equal bets on Pittsburgh with the first bookmaker and on Chicago with the second bookmaker. If the game ends with Pittsburgh winning by 16 points the bettor wins both of his bets; if Pittsburgh wins by 15 or 17, the bettor wins one bet and ties the other; any other result has the bettor winning one bet and losing the other, thus only losing the 10% "vigorish" on one of the bets. This process is called "middling." Bookmakers naturally try to avoid such situations and one manner this is accomplished is by the constant exchange of line information between bookmakers. See, *United States* v. *Box,* 530 F.2d 1258, 1261 N.5 (5th Cir. 1976).

This type of line exchange must be distinguished from the ordinary situations of a bookmaker telling a bettor what the line is or informing his bettors of changes in the line. Giving this information to a bettor serves a far different purpose than giving the same information to another bookmaker. Should the recipient of the information be both a bettor and a bookmaker, the purpose for which it is *given* must be determined before any conclusions can be made regarding the relationship of the two bookmakers *vis-a-vis* their two gambling operations.

Two other terms must be defined before the evidence in this case is examined. "Bearding" refers to, in effect, an undisclosed agency relationship whereby one bettor (the "beard") will place bets for another person from whom the bookmaker, for some reason, would not accept bets if the bookmaker knew the true source of the bets. A "beard" may be used because the true bettor has a bad credit record, or because the bettor has exceeded his betting limit on a particular game and he wishes to increase the bet nevertheless, or because the bettor has an uncanny knack for picking winners and the bookmaker concludes that he is overmatched (of course, this last example is a museum-piece rarity).

"Lamp-posting" is the antithesis of "bearding." In this situation a bookmaker claims that he cannot pay his debt to another bookmaker because the customer, whose bet he claims to have laid off, had not yet paid him. In fact, the "customer" is nothing more than a lamp post, and the "lay off" bet was a personal bet made by the bookmaker who now does not have the resources or the inclination to pay it off. This is not an uncommon ploy but it is one which, for obvious reasons, cannot be used more than a few times by an individual bookmaker lest he lose his "outs" at a time he really needs them.

The important point about these concepts, as they relate to this appeal, is that both "bearding" and "lamp-posting" involve personal bets, and not lay offs. Thus, the "beard" and the bookmaker who invents a "lamp post" customer to avoid paying a debt cannot be considered in reaching the five or more persons element of 18 U.S.C. 1955.

Appellant apologizes to the Court for the length of the preliminary material in this brief. However, before proceeding into a detailed analysis of the evidence of this case, appellant would like to make one further imposition on the Court's valuable time and respectfully requests that, at this point, the members of the panel read those sections of *United States* v. *Box,* 530 F.2d 1258, 1260-1262, 1264-1267 (5th Cir. 1976), entitled "The Nature of a Bookmaking Operation" and "§1955 and Nonbookmakers" including the very informative footnotes. The opinion in *Box* represents the most comprehensive and accurate appellate analysis of bookmaking operations in general and of Section 1955 in particular of any opinion heretofore reported. *Box* will be referred to often throughout this petition.

In the analysis of the instant case, three persons will play prominent roles. Roger Riccio, who began the case as a defendant, was a large bettor who, because of his poor reputation for paying his gambling debts, required the services of a "beard" in placing bets. Anthony Turzitti was Riccio's "beard." He was also Riccio's friend and he believed that Riccio was an expert at predicting the winning team in a sporting event. Turzitti was also a bookmaker who ran a relatively small gambling business which was based mainly in the tavern which he owned and operated. Hal C. Smith was a bookmaker who accepted bets from Turzitti and told Turzitti what the line was so that bets could be made.

Minor characters who play parts in this scenario include Randolph Riotto, who, from his gasoline station, called bets in to Turzitti, and appellant Joel M. Glickman, who was Hal Smith's employer.

The most important relationship to be analyzed is that between Anthony Turzitti and Hal Smith in regard to wagers placed by the former with the latter. It is whether

or not these bets could be classified as "lay offs" that, to a great extent, determined the sufficiency of the government's case.

The evidence showed a consistent pattern of gambling activity between Riccio and Turzitti and Smith throughout this case. Turzitti would call Smith and get a line. He would also get a line from another bookmaker (known as "K" or "Yussie"). Turzitti would then inform Riccio what the lines were and then wait for the latter to make his selections.

Before, during, and after this process, individual bettors were calling in their small bets—$10, $20, sometimes $50—to Turzitti, either directly or through Riotto, Naponelli or Palucci. Turzitti would accept these bets. No evidence whatsoever was introduced to show that any of these small bets were laid off by Turzitti, i.e., passed on to Smith.

Finally, Riccio would call Turzitti to tell him what teams he wanted Turzitti to bet for him, how large a bet to make, and with whom (Smith or "K") the bets should be placed. Then, and only then, would Turzitti call Smith or "K" and—after adding a bet of his own to that made by Riccio—he would forward one joint bet on a game or games to Smith or "K." Never did Turzitti fail to forward Riccio's bets, never did he fail to add a bet of his own to Riccio's, and never did the way bets were coming into his own bookmaking business remotely affect this pattern.

What Turzitti did with Riccio's bets can, in no manner, be termed laying off. No bet was made between Turzitti and Riccio. Indeed, there was no bet until Turzitti placed the joint bet with either Smith or "K." After placing the bet, Turzitti would call Riccio to inform him of this fact—certainly not an indication of a layoff.

One instance alone puts to rest the idea that Turzitti was laying off Riccio's wagers. At Tr. 242, government expert witness Cross is asked about the case of Turzitti being able to place Riccio's bet at a better line than Riccio expected it to be placed at. The expert agreed that, when this happened, Turzitti would inform Riccio of the better line.

There is nothing more antithetical to a bookmaker-bettor adversarial relationship than this type of activity. Had Turzitti not informed Riccio of the better line, the former would have been in a position for a double win on the amount bet by the latter. For example, if a bookmaker lays off a bet at —14 that was placed with him at —16, and the game falls 15, the bookmaker wins twice; once from his bettor and once from the other bookmaker. A win and a tie results if the game falls at 14 or 16, and, because he laid off the bet, any other result in the game does no worse than keeping the bookmaker even.

What happened here was that, by informing Riccio that the bet was placed at a more favorable line, Turzitti lost all advantage. It is beyond belief that, if he was a bookmaker laying off, he would act in such a manner towards his customer.

It is obvious then, that the bets Turzitti made for Riccio were not lay off bets. They were personal bets, pure and simple. The evidence showed, without contradiction, that Riccio was a bad credit risk so he needed a "beard" to make his bets. Turzitti played that role for Riccio and, because he respected Riccio's forecasting ability, Turzitti added his own bet to those of Riccio and gave one joint bet to Smith or "K." It is interesting to note that Turzitti had such faith in Riccio's ability that he never made a bet on his own, he would bet only after Riccio told him on which teams to bet.

The government and the Court of Appeals argued that Turzitti told Smith that the bet was a lay off and Smith believed that he was accepting a lay off, therefore it was a lay off. However, it must be remembered that Turzitti was "bearding" for Riccio and, as such, he would not, by definition, have disclosed the true source of his bets to Smith. *Box, supra,* teaches that a lay off bet must be distinguished from a personal bet *by the purpose and function of that bet.* This only can be accomplished from the point of view of the bettor. "The occupation and motives of the person accepting the bet are irrelevant . . ." since the receipt of a lay off bet is no different than the receipt of a personal bet (the bookmaker who lays off must pay the "vigorish" on losing bets). *Box, supra* at 1262.

This also explains Turzitti and Riccio contemplating "lamp posting" Smith at one point. By claiming that the bet was a lay off and that the "bettor" had not paid him, Turzitti and Riccio would be able to stall paying off their own debt to Smith who, of course, did not know that Turzitti was "bearding" for Riccio.

The purpose of the bets made by Turzitti for Riccio and himself was to win money. They were made in complete disregard to balancing Turzitti's bookmaking accounts. And the bets Turzitti made far exceeded any amounts of bets Turzitti had taken in wagers. (On October 18, 1973, Turzitti received $16 in wagers and allegedly "laid off" $10,000 worth of bets.) Actually this $10,000 represented the combined bets of Turzitti and Riccio made to either Smith or to "K."

In *United States* v. *Thomas,* 508 F.2d 1200, 1202 N.2 (8th Cir. 1975), *cert. den.,* 421 U.S. 947, the court stated the exact situation which occurred in the instant case.

> "Bookmakers, however, can and commonly do place personal wagers with one another which are not 'lay off' bets."

The evidence clearly showed that the Turzitti bets were personal bets.

The government argued that, by giving the line to Turzitti, Smith and Glickman became part of Turzitti's operation for purposes of the statute. No case has ever held that the dissemination of line information, without more, has been sufficient to fuse two groups into one. See, *United States* v. *Guzek,* 527 F.2d 552, 556-558 (8th Cir. 1975). To so hold could make every bookmaker with four or more customers subject to federal prosecution in contradiction to Congressional intent.[8]

Smith did provide a line to Turzitti and, at times, Turzitti informed his employees of the line so that Turzitti's customers could make bets. Nevertheless, every use to which a line is put is not relevant. The only relevant factor should be the purpose for which the line is given.[9]

---

[8] This theory could also link every bookmaker to his line source's line source and to that person's line source *ad infinitum.* During the oral argument of *Box,* "[w]hen asked whether, under the Government's theory [that indirect and remote links were sufficient to fuse bookmaking operations for the purposes of Sec. 1955] . . . , every bookmaker in the country might be charged in one single-count indictment, counsel for the Government responded, "That's an intriguing possibility." Such intrigue should be put to rest before it is seriously considered. See *Box, supra* at 1268, n.33.

[9] "Yussi" and "K" were also giving Turzitti the line which he passed on to Riotto and the others as often as the Smith-Glickman line. Yet to argue that Yussi and K are part of this five-person gambling business is ridiculous.

If it is given, as noted above, so that the operations can be protected against "middling," then there may be some evidence of a link between the two operations which, with more, could be enough to establish a fusion. See, *Box, supra,* at 1261, N.5.

In the instant case there is nothing of this sort. Smith's sole purpose in giving Turzitti the line was to enable Turzitti to make bets. Smith was not concerned with Turzitti's small gambling business. The fortuitous use of the line by Turzitti in his business was not the purpose for which Smith gave Turzitti the line at any time. Smith gave Turzitti the line for precisely the same reason that he gave it to any other bettor—to give that bettor the opportunity to place losing wagers. As Hal Smith himself said: "All I wanted to do was to beat him. I want to beat anyone I deal with, that's all." (Tr. 130)

With no lay off betting and no showing of any purpose for giving out the line, other than the ordinary bookmaker to bettor information, there was no evidence in this case to link the two operations together. Therefore, the "five or more persons" element of the section was not satisfied.

CONCLUSION

This is an excellent case for this Court for two separate reasons. First, this Court will have the opportunity to definitely construe a confusing and much abused statute: Title 18, United States Code, Section 1955. Many prosecutions based on this law have hinged on the amount of interaction required to link two persons or businesses into one. No comprehensive ruling on this matter has ever been reported. As a result, prosecutions based on this statute have been inconsistent and, as in this case, brought without a full understanding of the realities of the proscribed conduct.

Secondly, and perhaps more importantly, this case gives the Court an opportunity to discuss the role of the expert witness. The defense in the instant case accused the government's expert of "intellectual dishonesty" because he developed new theories of the gambling business and new definitions of gambling terminology to fit facts which could not support convictions on established theories and definitions. This type of testimony subverts the role of an expert witness who, theoretically, should not be concerned with convictions. If the government's experts create new hypotheses based on the facts of the particular cases in which they are called to testify, then any claim of scientific objectivity (which lies at the heart of permitting expert testimony) is a fraud on the court and a disservice to the system of criminal justice. This case presents the court with a perfect opportunity to outline the parameters beyond which an expert witness may not stray.

WHEREFORE, for the foregoing reasons, a writ of *certiorari* should be granted to review the judgments below.

Respectfully submitted,

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APPENDIX

APPENDIX A

In the

United States Court of Appeals

For the Seventh Circuit

No. 76-1434

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

ANTHONY TURZITTI, JOEL M. GLICKMAN and RANDOLPH RIOTTO,

Defendants-Appellants.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division
Judge BERNARD M. DECKER, *presiding.*

Argued October 22, 1976—Decided January 3, 1977

Before CLARK,* *Associate Justice,* FAIRCHILD, *Chief Judge,* and HASTINGS, *Senior Circuit Judge.*

* Associate Justice Tom C. Clark, United States Supreme Court (Ret.), is sitting by designation.

MR. JUSTICE CLARK:

The appellants, Joel M. Glickman, Randolph L. Riotto and Anthony Turzitti, were convicted by a jury on a one-count indictment charging them with conducting a gambling business unlawful under Illinois law[1] in violation of 18 U.S.C. § 1955.[2] A fourth defendant, Roger Riccio, was acquitted on instruction of the court at the close of the Government's case. Augustus John Lazzerini, Charles P. Naponelli, Vincent Michael Palucci and Hal C. Smith were named as unindicted participants in the gambling business as well.

On appeal, the appellants jointly allege that insufficient evidence exists to support their § 1955 convictions, focus-

[1] Illinois Revised Statutes, Chapter 38, §§28-1 (a)(2); 28-1 (a)(10) and 28-1.1 (b) and (d).

[2] 18 U.S.C. § 1955 provides in part as follows:

(a) Whoever conducts, finances, manages, supervises, directs, or owns all or part of an illegal gambling business shall be fined not more than $20,000 or imprisoned not more than five years, or both.

(b) As used in this section—

(1) "illegal gambling business" means a gambling business which—

(i) is a violation of the law of a State or political subdivision in which it is conducted;

(ii) involves five or more persons who conduct, finance, manage, supervise, direct, or own all or part of such business; and

(iii) has been or remains in substantially continuous operation for a period in excess of thirty days or has a gross revenue of $2,000 in any single day.

(2) "gambling" includes but is not limited to pool-selling, bookmaking, maintaining slot machines, roulette wheels or dice tables, and conducting lotteries, policy, bolita or numbers games, or selling chances therein.

ing on the "five man operation" and the "$2,000 gross revenue on any given day" requirements of the statute. Glickman individually asserts that the trial court's instructions regarding lay off bets were erroneous and prejudicial, and also claims that the Government's failure to produce the original notes of its expert witness violated 18 U.S.C. § 3500. Finally, Turzitti claims that the prosecutor made a prejudicial statement concerning the size of the appellants' gambling operation during closing argument. We find no merit in any of the contentions and affirm the judgment.

I.

The appellants concede that each of them was involved in a bookmaking business but contend that there were actually three separate operations, none of which was sufficiently large to come within the interdiction of the Act. Specifically, the appellants urge that when each operation is considered alone, neither the statutory requirement of five persons comprising the gambling business nor $2,000 gross revenue on any given day is satisfied.

In presenting its case, the Government offered proof that the allegedly separate bookmaking operations were fused together through "lay off" bets and "betting lines," with the result that the combined operation more than satisfied the § 1955 requirements.

The evidence presented by the Government was gleaned nearly exclusively from tapes of intercepted telephone conversations between the various parties[3]—the Turzitti

[3] It is undisputed that the interceptions were properly authorized, monitored and recorded pursuant to court order, and that the original and duplicate tape recordings, agents' logs and composite tape, together with their transcripts and voice identifications accurately reflected the monitored conversations.

operation, composed of Turzitti, Riotto, Naponelli and Palucci, and the Glickman-Smith operation.[4] Conversations between Turzitti and Smith revealed that Smith furnished Turzitti the current handicaps betting lines as well as game results on a daily basis, which information Turzitti relayed to his people (Riotto, Naponelli and Palucci) for the purpose of securing bets. The monitored telephone conversations also showed that Turzitti received wagers which he subsequently placed with Smith along with bets of his own. The Government expert characterized the placing of the Riccio bets as a "lay off" whereby Turzitti passed them on to Smith (Glickman's employee).

The appellants claim that Turzitti acted as a "beard" for Riccio in this regard.[5] However, we note that in a monitored conversation on October 13th after a football game, both Smith and Turzitti spoke of the "lay off bets" that Smith had accepted from Turzitti.[6] And on the next day, Turzitti asked Smith to increase the lay off from

[4] A third bookmaking group was that of Augustus Lazzerini and "Yussi" or "K", both of whom appear on the telephone interceptions of Turzitti and Riotto.

[5] "Bearding" is an undisclosed agency relationship whereby one bettor (the beard) will place bets for another person from whom the bookmaker will not accept bets directly, usually for credit reasons.

[6] Now Turzitti says that he was "bearding" for Riccio and could not disclose his true source. However, the jury, as well as the trial judge, found that Turzitti was laying off bets to Smith. We agree.

"4" ($400) to "5" ($500) because he was "stuck with a dime [$1,000] altogether," to which Smith agreed.[7]

We are of the opinion that these allegedly separate bookmaking operations were linked closely enough to constitute a single bookmaking business. The Fifth Circuit has considered this question in *United States* v. *Box,* 530 F. 2d 1258 (1976). At the suggestion of the appellants, we have studied *Box* and find it very helpful in our decision here. As Judge Goldberg points out:

> In almost every case the question has been whether the exchange of lay off bets, usually in addition to the exchange of line information, could be enough to link two separate bookmaking operations into one business for the purpose of meeting the § 1955 jurisdic-

[7] On October 13, after the Iowa game, the tape reads:

Hal (Smith): You must have really got it barrelled into you on that Iowa game, huh?

Tony (Turzitti): Got it barreled into me, huh?

Hal: Well you gave me $15.00 [$1500] worth.

Tony: Yeah. Yeah.

Hal: You must have really caught it there.

Tony: I had, I had about 4 on the game. I went out . . . with another 15 . . . I kept a dime of it . . .

Hal: Well, that was about your only good game of the day, right?

Tony: Yeah. What could I do with it? I mean I can't hold 4, you know what I mean . . .

Hal: Yeah.

Tony: I'm not prepared for it. Let's put it that way, that's all.

And on October 14, the monitored tape reads:

Hal: I know, I'd like to hold it at four, if I can.

Tony: I know, but it's possible. I'm stuck. I'm stuck with a dime [$1000] altogether. Why don't you take half? Take one more.

Hal: Alright.

tional requirement of five participants in one business. The answer has in every case been affirmative —the regular direct exchange of lay off bets and information can connect otherwise independent gambling operations . . . into one business. At 1265-6.

He further states:

> . . . it seems clear that, at least in this circuit, a professional gambler who accepts bets in the nature of lay off bets and, additionally, provides line information to the same bookmaking operation can be convicted as part of that operation under § 1955.
>
> The cases establish, then, that one who accepts lay off bets can be convicted if any of the following factors is also present: . . . evidence that the individual performed any other substantial service for the bookmaker's operation, as, for example, in the supply of line information; or evidence that the individual was conducting his own illegal gambling operation and was regularly exchanging lay off bets with the other bookmakers. At 1266.

Viewing the evidence in the light most favorable to the Government, *Glasser* v. *United States,* 315 U.S. 60 (1942), it is clearly sufficient to support the finding that the allegedly separate bookmaking businesses were fused through the exchange of information into one operation, thus satisfying the "5 man" requirement.

Insofar as the $2000 gross revenue mandate is concerned, the Government introduced evidence showing that the Turzitti-Glickman operation received a total of $40,638 in wages between October 10 and 22nd. On six days during this period, the daily gross revenue was in excess of $2000. Thus, the requirement is satisfied.

II.

Here the trial court's instruction on lay off betting is attacked in the second claim of error.

Appellant Glickman proposed the charge initially, taking it verbatim from the one given in *United States* v. *Schaefer,* 510 F. 2d 1307, 1311 (8th Cir. 1975), *cert. denied,* 421 U.S. 978, at n. 5. The trial judge added a 15-word clause to the proposal which we underscore, making it read as follows:

> A "lay off" bet is a bet or wager placed by one bookmaker with another bookmaker, *and one example of such a lay off bet is a situation where a bet* is necessitated by an influx of an imbalance of bets and wagers on a given sporting event and which *bet* has the effect of distributing the said bets and wagers, thus minimizing the risk of substantial loss.

Appellants assert that the charge as given turned the definition into merely one example of such a bet, leading the jury to conclude that merely because Turzitti and Smith were both bookmakers, the bets in question were layoffs. They further insist that when combined with an instruction offered by the Government (No. 37), charging that one who makes lay off bets conducts the gambling operation with which he places the bets and one who received such lay off bets and gives line information to other bookmakers conducts the latter operation, the charge was unduly prejudicial.

We understand that not every bet between bookmakers need be a lay off. *United States* v. *McCoy,* 75-1641 (5th Cir., filed September 30, 1976); *United States* v. *Box,* 530 F. 2d 1258, 1267 (5th Cir. 1976). But we do not believe it was the intention of the trial judge, when he gave his instruction, to have the jury so conclude. Rather, we believe the purpose of the instruction was to convey to the jury the fact that bookmaking is not a precise science, that while the most common instance of lay off betting occurs when there is an imbalance of bets and wagers on

a given sporting event, and while its usual effect is to distribute among various bookmakers the imbalance, thus minimizing the risk of substantial loss to any one bookmaker, one could not say, as a matter of law that such is the only instance of laying off. Moreover, the jury was further instructed:

> A professional bookmaker who also bets, who also bets in the course of his business may be included. A "bettor," one who merely places a bet, is not included. And a mere placing of a bet does not make a person a participant in itself in a gambling enterprise for purposes of satisfying the five or more persons requirement of the offense charged in this case.

We think that this instruction, when read in conjunction with the one complained of by appellants, cures any problem that may have existed.

In any case, we believe the evidence outlined in Part I of this opinion strongly tended to show that Turzitti and Smith considered Turzitti's bets as lay offs and that a guilty verdict was most probable even had appellants' proposed instruction been given.

III.

The remaining two points of error really need no discussion. Turzitti makes objection to the closing argument of the prosecutor, claiming it to be improper and prejudicial. The portion attacked is as follows:

> Now, you also heard testimony to the effect that in that two weeks there was a total figured up by Mr. Cross, the expert of $40,000 . . . You can use your own common knowledge and your own logic and your common sense and your reason, that's over $1,000,000 a year. Small bookmaker, indeed!

But we must view the argument as a whole. *United States* v. *Greene,* 497 F. 2d 1068 (7th Cir. 1974). The remark was

made in rebuttal to the "Mom and Pop operation" that appellants claimed to be operating. Indeed, one of appellants' counsel stated that he was "ashamed for my government that he has wasted your time, that it has wasted money and effort—and has produced a 'mouse'." We believe it to be only fair that the prosecutor be allowed to answer such a charge using only simple arithmetic. It appears to us that the appellants were caught on their own petard.

The final specification of error has to do with the Government's failure to produce notes made contemporaneously by its expert as he was preparing two reports for use in his testimony and of which copies were furnished appellants. It appears that in analyzing transcripts of 300 such monitored conversations, the expert made some notes and arithmetical calculations. He testified that he put the notes in the form of two reports. Counsel requested production of the notes while the expert was under cross examination, citing 18 U.S.C. § 3500. Appellants have suggested that we examine the notes under *Krilich* v. *United States,* 502 F. 2d 680 (7th Cir. 1974), and we have done so, as did the trial judge. We find it perfectly clear that the appellants were not prejudiced by the failure of the Government to produce the same.

Affirmed.

A true Copy:

Teste:

Clerk of the United States Court of Appeals for the Seventh Circuit

APPENDIX B

Opinion by Justice Clark
UNITED STATES COURT OF APPEALS
For The Seventh Circuit
Chicago, Illinois 60604
January 3, 1977
Before
Hon. Tom C. Clark, Associate Justice *
Hon. Thomas E. Fairchild, Chief Judge
Hon. John S. Hastings, Senior Circuit Judge

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

No. 76-1434 vs.
ANTHONY TURZITTI, JOEL M. GLICKMAN and RANDOLPH RIOTTO,
Defendants-Appellants.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 75 Cr 666
Bernard M. Decker, Judge.

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, AFFIRMED, in accordance with the opinion of this Court filed this date.

* Associate Justice Tom C. Clark, United States Supreme Court (Retired), is sitting by designation.

APPENDIX C

UNITED STATES COURT OF APPEALS
For The Seventh Circuit
Chicago, Illinois 60604
February 18, 1977

Before
Hon. Tom C. Clark, Associate Justice
Hon. Thomas E. Fairchild, Chief Judge
Hon. John S. Hastings, Senior Circuit Judge

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

No. 76-1434 vs.
ANTHONY TURZITTI, JOEL M. GLICKMAN and RANDOLPH RIOTTO,
Defendants-Appellants.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 75 Cr 666
Bernard M. Decker, Judge.

On consideration of the petition for rehearing filed in the above-entitled cause,

IT IS HEREBY ORDERED that the petition for rehearing in the above-entitled appeal be, and the same is hereby, DENIED.